TRIAL — VERDICTS — AFFIDAVITS OF JURORS TO SHOW "CHANCE" VERDICTS. — An affidavit of nine jurors stated the following: The nine jurors were for the plaintiff and the others for the defendant. Differing on a proposition of law, they all agreed to ask for an additional instruction and to give their verdict according to the instruction. The instruction was favorable to the defendant, and a verdict was given for him. The nine would not have consented to this verdict but for the agreement. *Held*, that the affidavit may be received and that the verdict is invalid. *Garden* v. *Moore*, 156 N. W. 410 (Ia.).

Where it is shown that the jurors made and acted on an agreement to determine by chance the verdict or its amount, the verdict will be set aside. *Houk* v. *Allen*, 126 Ind. 568, 25 N. E. 897; *Merseve* v. *Shine*, 37 Ia. 253; *City of Ottawa* v. *Gilliland*, 63 Kan. 165, 65 Pac. 252. The objections to "chance" verdicts are that the agreement made bears no relation to the merits, and that the jurors feel precluded by the agreement from further consideration of the case. Where the jurors are divided because they differ as to a point of law, if they agree to follow, and do follow, the judge's instruction on this point, only the second objection would apply. This objection in itself, it is submitted, is not a sufficient reason for the court to assume the danger incident to disturbing the verdict. But if, as the court assumed in the principal case, the agreement of the jurors is to follow an instruction irrelevant to their disagreement, the verdict is a true "chance" verdict. In most states, in the absence of a statute, affidavits of jurors are not admissible to show their own misconduct in rendering a verdict. *McDonald, etc.* v. *Pless*, 238 U. S. 264; *Birmingham, etc. Co.* v. *Moore*, 148 Ala. 115, 130, 42 So. 1024, 1029; *Hull* v. *Larson*, 14 Ariz. 492, 131 Pac. 668. Such statutes, however, are not infrequent in the case of quotient verdicts, while some states, including Iowa, have obtained the same result by decision. *Wright* v. *The Illinois, etc. Tel. Co.*, 20 Ia. 195; *Elledge* v. *Todd*, 1 Humph. (Tenn.) 43. See DEERING, CODE CIV. PROC. CAL., § 657; REM. & BAL. CODE (Wash.), § 399.

TRUSTS — RIGHTS AND LIABILITIES OF THIRD PARTIES — RECOVERY AGAINST TRUST ESTATES FOR SERVICES RENDERED THE TRUSTEE. — The beneficiaries of a trust estate brought a bill in equity for the removal of the trustee. The trustee, as such, engaged an attorney who successfully defended him. The attorney now seeks to recover for his services in an action against the trustee in his representative capacity. *Held*, that he cannot recover. *Jessup* v. *Smith*, 170 N. Y. App. Div. 605.

Except as expressly authorized by the instrument creating the trust, a trustee cannot give third persons with notice direct rights against the trust estate. See 2 PERRY ON TRUSTS, § 815 (*b*). However, in an accounting between the trustee and the *cestui que trust*, exoneration may be given the trustee for liabilities incurred under contracts which were proper, though not authorized. This right to exoneration, being an equitable asset of the trustee, may be reached by a bill against the trustee and *cestui que trust*. *Fairland* v. *Percy*, L. R. 3 P. & D. 217; *Laible* v. *Ferry*, 32 N. J. Eq. 791. See *Merchants' Nat. Bank* v. *Weeks*, 53 Vt. 115. But such remedy is secondary, and contingent upon the failure of the creditor's primary right against the trustee as an individual; for the adjudication of rights between the trustee and *cestui que trust* should come in their regular accounting, and not at the behest of any creditor. See L. D. Brandeis, "Liability of Trust Estates on Contracts made for their Benefit," 15 AM. L. REV. 449, 457. A few cases hold that there is a direct right against the trust estate founded on unjust enrichment, when the trustee is insolvent and the derivative right through him is valueless because of claims of the estate against him. *Manderson's Appeal*, 113 Pa. St. 631, 6 Atl. 893; *Courier-Journal Job Printing Co.* v. *Columbia Fire Ins. Co.*, 54 S. W. 966 (Ky.) See A. W. Scott, "Liabilities in the Administration of Trusts," 28 HARV. L. REV. 725, 740. In

the principal case it did not appear that the estate had been enriched or that the creditor's primary right against the trustee as an individual would fail in any respect. The denial of a right against the trust estate on either ground was therefore proper.

TORTS — LIABILITY OF A MAKER OR VENDOR OF A CHATTEL TO A THIRD PERSON INJURED BY ITS USE — LIABILITY FOR INJURY RESULTING FROM A DEFECTIVE AUTOMOBILE WHEEL. — The defendant, an automobile manufacturer, sold a car with a defective wheel to a dealer. The defendant did not make the wheel, but was negligent in inspecting it. The dealer resold to the plaintiff, who was injured as a result of the defect. For this injury, the plaintiff sues. *Held*, that he may recover. *McPherson* v. *Buick Motor Co.*, 54 N. Y. L. J. 2339 (N. Y. Ct. of Appeals).

For a discussion of the principles involved, see NOTES, p. 866.

TORTS — WILFUL INTERFERENCE WITH PLAINTIFF'S BUSINESS — JUSTIFICATION — CHURCH INTERDICT AGAINST NEWSPAPER. — The defendants, bishops of the Roman Catholic Church, published in a pastoral letter an interdict against the plaintiff's newspaper. The paper was condemned as "greatly injurious to the Catholic Faith and discipline," and all Catholics were forbidden to read, keep, or subscribe thereto, upon pain of committing sacrilege. The plaintiff now sues for damage to his business. *Held*, that he cannot recover. *Kuryer Pub. Co.* v. *Messmer*, 156 N. W. 948 (Wis.).

In dealing with the modern questions involved in the interference with trade relations, there is a growing tendency to approach the problem from the premise that all harm intentionally caused by active conduct is actionable unless justified. *Walker* v. *Cronin*, 107 Mass. 555, 562; *Tuttle* v. *Buck*, 107 Minn. 145, 149, 119 N. W. 946, 947. See POLLOCK, TORTS, 8 ed., 21. But there seems to be no well-settled legal principle as to what constitutes a justification. See *Vegelahn* v. *Guntner*, 167 Mass. 92, 44 N. E. 1077. In an effort to find a general rule, the courts have attempted to apply various formulæ. See *Allen* v. *Flood*, [1898] A. C. 1; *Bohn Mfg. Co.* v. *Hollis*, 54 Minn. 223, 55 N. W. 1119. Perhaps the most rational of these justifies the intentional injury only if incidental to a legitimate business endeavor. *National Protective Ass'n* v. *Cumming*, 170 N. Y. 315, 63 N. E. 369; *Keeble* v. *Hickeringill*, 11 Mod. 74; *Quinn* v. *Leathen*, [1901] A. C. 495. But what is "legitimate" and "incidental"? It seems preferable to determine whether or not the interference is actionable primarily by the relative social utility of the success of the defendant's purpose on the one hand and the injury to the plaintiff's lawful business on the other, and not upon an attempt to justify, to interpret, or to apply such uncertain terms as "unmixed malice," "unlawful motive," or "conspiracy." *Tuttle* v. *Buck*, *supra*. See O. W. Holmes, "Privilege, Malice and Intent," 8 HARV. L. REV. 1, 8. The principal case presents essentially the same problem, and should be decided upon the same considerations; the public policy against judicial interference with essentially church matters should weigh in the balance. There is perhaps an analogy in the privilege accorded to church communication in the law of libel. See 29 HARV. L. REV. 561.